IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2706 of 1999
For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMANWALA MULUWALA

Versus

STATE OF GUJARAT

Appearance:

MS SNEHA P VAIDYA for Petitioner
MS SIDDHI TALATI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 10/04/2000

ORAL JUDGEMENT

This petition is filed for an appropriate writ, order or direction directing the respondent authorities to release compensation/ Jiwai, at the earliest with interest thereon to the petitioner by complying with the order

passed by the State Government at Annexure `C' on October 16, 1990 .

The petition has a chequered history. The petitioner is a son of Late Darbar Muluwala of erstwhile Jagir of Jetpur in Saurashtra Ex-Jetpur State was the Privy purse i.e. an Annuity State. It was stated in the petition that on 15th January, 1935, by `Lekh' No. 1320 Jiwai of the disputed land was given to the petitioner as inheritance . But at that time, the petitioner was a minor and the State was under the control of late Darbar. The amount was, therefore, deposited in the State treasury and it was not paid to the petitioner because of his minority. After Independence, the land was treated as Khalsa land and revenue was deposited with the Government. The management was taken over by the Agency. In 1948, during the erstwhile Saurashtra State, liability of the State was transferred to Saurashtra State. But even at that time, the petitioner was not paid Jiwai . In 1951, Saurashtra Barkhali Abolition Act, 1951 came into force. The petitioner filed an application under Section 18 of the said Act on 13th September, 1960 for getting Cash Annuity Card for compensation before the Mamlatdar, Jetpur. The said application was, however, rejected on 14th September 1963 inter alia observing that the petitioner cannot be said to be Barkhalidar and the provisions of the Gujarat Surviving Alienation Abolition Act,1963 were applicable and the proceedings were required to be taken under the said Act. It appears that orders were passed by various authorities against the petitioner. Finally, the petitioner was constrained to approach this Court by filing SCA No. 1652 of 1978. This Court allowed the petition filed by the petitioner on April 29, 1985. A. M. Ahmadi, J.(as he then was) delivered the judgment, operative part of which reads as under:

> "I, therefore, direct that the assistant collector will consider the question whether the applicant was a jiwaidar on the appointed day i.e. the date on which the Act came into force. Having in the Lekh Annexure A and the letter, Annexure B, and such other documentary evidence on record, regardless of the fact that from 1947 to 1980, the applicant had not claimed the vighoti collected by the officers of the State of Saurashtra and the State of Gujarat. The application will not be treated as State and the Assistant Collector will dispose it of on merits

and not on any technicalities . The fact that the name of the applicant was not entered in the revenue record as Jiwaidar may be taken as a mere circumstance, but if the documentary evidence on record shows that he was a Jiwaidar, the mere omission to enter his name as Jiwaidar will not deprive him of the right of compensation under section 12 of the Act. It is in this premise that the Assistant Collector will dispose of the application within six months from today.

Rule made absolute with no order as to costs."

The petitioner thereafter also made several attempts but in vain. Ultimately, the State Government passed an order on October 16, 1990 (Annexure `C'),operative part of which reads as under :

"On the aforesaid reasons, the revision application is hereby allowed. The order dated 16th October 1986 passed by the Deputy Collector , Gondal is hereby quashed. It is hereby instructed to give grant under Satvarpan Abolition Act.

Pronounced in the open court . Forwarded today i.e., on 16/10.90 making seal and signature."

After the above order, the petitioner made applications to the authorities for compliance of the said report and for making payment on the basis of the said order which was passed by the State Government in pursuance of the proceedings initiated by the petitioner. Those applications are annexed to the petiton as Annexures `D' and `E'. But nothing was done by the respondents. Hence, this petition.

On 5th October,1999, the petition cane up for preliminary hearing and my learned brother M.S.Shah,J, passed the following order :

"The learned counsel for the petitioner makes a grievance that in spite of the fact that the State Government in the Revenue Department passed the order dated 16.10.1990 (Annexure C to the petition) directing the Deputy Collector, Gondal to give grant under the Satwarpan Abolition Act,

to the petitioner and in spite of the fact that the petitioner has been making representations to the Deputy Collector, Gandhinagar (Annexure B) for giving the petitioner fruits of the above order, no action is taken by the respondents. Notice for final disposal returnable on 25.10.1999."

Today, I have heard the learned advocates.

Ms Vaidya for the petitioner contended that the petitioner was and is entitled to all benefits . Those benefits were not extended to the petitioner as the petitioner was a minor at the relevant time. So far the claim of the petitioner is concerned, it was never disputed and could not be disputed. When proceedings were initiated under the Barkhali Abolition Act, the authorities observed that provisions of the the said Act were not applicable, as the case was covered by the Gujarat Surviving Alienation Abolition Act, and the petitioner was entitled to the benefits under the latter Act. No payment was, however, made to him. He was,therefore, constrained to approach this Court. A petition filed by him was allowed. Necessary directions were issued. But even those directions were not complied with. Again, he had to enter into litigation and finally, in October , 1990, an order was passed by the State Government. But the petitioner was not paid his legitimate dues. It was stated in the petition that the petitioner approached the Deputy Collector , Gondal, respondent No.2 herein but he was informed that as the papers were misplaced and not available ,nothing could be done in the matter.

In my opinion, when the petitioner succeeded before this Court as well as in subsequent proceedings before the State Government, he would be entitled to all benefits and there is no reason and/or ground not to extend the benefits to which he is held entitled.

In the result, the petition is allowed. Rule is made absolute by directing the respondents to comply with the orders passed by this Court as well as by the State Government. Since the matter pertains to remote past and the petitioner, who was a minor when the proceedings were initiated, has reached the age of 70 years, it is directed that the respondent authorities will take appropriate decision of extending benefits to which he is entitled as expeditiously as possible preferably within four months from the receipt of the writ. Payment will

be made to the petitioner with interest at the rate of 12% per annum from the date of order passed by the State Government on October 16, 1990. The petition is allowed to the extent indicated above with costs.

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parekh